UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

IN RE:	.	Case No. 23-13359-VFP
	.	
BED BATH & BEYOND, INC.,	.	M.L.K. Federal Building
et al.,	.	50 Walnut Street, 3rd Floor
	.	Newark, NJ 07102
Debtors.	.	
	.	June 27, 2023
. . . . .	.	2:42 p.m.

TRANSCRIPT OF DEBTORS MOTIONS [18,29,644,724,773]
BEFORE HONORABLE VINCENT F. PAPALIA
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

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I N D E X

THE COURT: Okay, good afternoon. It is Tuesday, January 27, 2023. This is the United States Bankruptcy Court for the District of New Jersey and we are here on the court's calendar in the Bed Bath & Beyond matter. There was an agenda and then I think recently filed was the notice of amended agenda of matters.

MS. GEIER: That's correct, Your Honor. Good afternoon, Your Honor. Emily Geier, Kirkland & Ellis, on behalf of the debtors. We did file an updated agenda just reflecting a couple of additional filings. I think the further advised order for the sale order was placed on file, so just wanted to make sure that Your Honor had all the documents reflected there.

THE COURT: Okay. So are you going to be presenting, Ms. Geier, and going through the agenda or do you have any matters to report before we get started?

MS. GEIER: Yes, Your Honor. I would love to give just a brief update on sort of some of the progress that we've been making in the efforts over the past even just a few days since seeing Your Honor and maybe make a couple of initial comments about one of the more interesting pleadings for today.

So yesterday, we had a very successful lease auction, exceeded expectations in terms of the value achieved. Probably hundreds of APAs flying around at this point. Today we'll see the household name of Bed, Bath & Beyond preserved.

THE COURT: Oh.

MS. GEIER: With a buyer, Overstock.com, well-known and reputable company that we know that the -- that the name will be in very good hands and we'll be able to see this name going forward in the future.

There will be several other of these transactions here, but -- presented today, but tomorrow there's yet another auction. We'll be hearing from the Baby assets, so buybuy Baby. There'll be potentially a sequential auction where we look at different sets of those assets and how they may ultimately come together. So we'll have a further update at the next hearing, Your Honor.

But just wanted to highlight these points to say that the company management advisors have been working at breakneck speed to generate value and recovery for the statements creditors and we're focused on getting a plan on file that's listed and confirmed before the shotgun clock runs out in a couple months.

THE COURT: Well, that is great news and I'm very pleased to hear that. And I'm gratified, is the right word, and that the name is being preserved is further gratification.

MS. GEIER: Yes, we are absolutely thrilled as well, Your Honor.

THE COURT: That's very good news. Congratulations --

MS. GEIER: Thank you very much.

THE COURT: -- on getting that done.

MS. GEIER: I've successfully taken away all the exciting news that my colleague was going to share, so please react very surprised when he comes up.

THE COURT: That's between you and --

MS. GEIER: So additionally, at the last hearing, of course, the parties presented a consensual substantially uncontested final DIP order reflecting a settlement that potentially shares recoveries with all creditors and really puts us on a path to being the most efficient as we can in reaching finality and closure in these cases.

In a particularly difficult case, such as this one, Your Honor, I think my partner, Josh Sussberg, said it the first day, unprecedented in his career on the insurmountable difficulties that we faced.

It's not the consensus is the best path forward. It's that consensus is the only path forward that we have. Without it, the train falls off the tracks rather quickly. And we say that only to note that there have been recent developments in the motion to reconsider filed at docket number 982. I believe there's further advisements that actually unseals the majority of that motion.

The debtors filed a response at docket number 1081, but understandably, this has all been happening in the past 24

hours so we wouldn't expect Your Honor to have read a motion that we filed -- or an objection that we filed just earlier today.

Just a couple of quick notes so that you know where the debtor's position sits on this. The debtor will never begrudge a party for protecting its own interests seeking the rights that it needs to, to protect those clients. But here, we are quite confident that this is against the interests of all creditors, including their clients in terms of the weights of the precious resources that are being utilized even now, that would be utilized to continue further going down this road, the 30 million dollars in funds that the debtors worked so hard to negotiate at the outset of these cases for the protection of those administrative and party claimants and that settlement for the sharing of proceeds.

So from our perspective, Your Honor, we cannot have this cloud hanging over our heads for very long. We'll defer to the wisdom of this court as to how we proceed to resolve it. We just want to note that we believe that the Ad Hoc Group has had its opportunity to be heard, to object, to seek discovery. They've had an opportunity granted by Your Honor to seek an extension of the challenge period under the DIP order, which they chose not to pursue. Counsel successfully preserved that right and stipulated on the record that it was the only right that was preserved.

These issues alone make this motion improper, untimely, procedurally defective. I won't rehash the papers on Rule 60(c), Section 364(e). Surprised to say that this cake cannot be unbaked two months into the case. There's just no excuses or justifications for such post-hoc relief and no new evidence giving rise to a basis under 60(b) has been shown.

The Ad Hoc Group points to week one actual cash results as demonstrating new evidence. The debtors don't have a crystal ball. Ms. Etlin, our CRO [*sic*], she's the best in the business, but even she does not have a crystal ball. All they had to do was ask for those projections week two and we could have been here week three discussing about whether there was something to be done or what -- you know, what the reasons were there.

So that said, the debtors wanted to file papers today specially and most importantly to make the record clear on exactly why, how and for what reason those numbers differed from projections to actuals. We all take for granted that there's a lot of unpredictability here as we transition through the filing of a case.

The upshot of that very detailed variance report that we shared with Your Honor is that while the cash went positive -- and that's theoretically a good thing -- it is largely the result of banking issues that caused late payments to creditors and delayed opening of the separate reserve

accounts that we were supposed to have open much more quickly.

So the positive side of a slight uptick in sales, that's not a basis upon which to rely to move forward on contested cash collateral, you know, seeking to hope for the best and get cash just to eke out one more day in the cases. Moreover, the necessity of the DIP remains undeniable today as it did then.

For all of those same reasons, the DIP preserved the path to the going concern. It preserves the path to payment of administrative claims, which reaches finality in Chapter 11 plan confirmation. These prospects would be gone without this DIP approved on the first day and to ensure the debtors had necessary funds to operate the business. That immediate and irreparable harm standard, Your Honor, we are well aware of and we would not have sought a DIP financing order from Your Honor on the first day had we not absolutely felt it necessary.

Was the roll-up our favorite feature of that DIP? No. Of course not, Your Honor, but that was the hand that we were dealt and we were fortunate to get a lot of great concessions from the DIP lenders in that regard and the Committee finished the job getting additional concessions through the final DIP order.

So, Your Honor, we stand here just to simply say that the motion that was filed contains a series of mistakes and mischaracterizations that don't merit the estate resources

spent. There was an unfortunate, whether inadvertent, not interested in the motives as -- right now as to why confidential information was publicly shared on the docket, but that was harmful to the debtors. It is something that could threaten the value of the estate's. We are in the middle of asset monetization. That is absolutely not helped by that kind of disclosure.

But we just wanted to make your position -- our position clear and we'll defer to Your Honor in terms of the best ways to proceed from here.

THE COURT: Well, I mean, I was thinking we were going to deal with that last because it might be the longest, but if you want to deal with it now, we can deal with it now. I had -- I had a thought or two, but I was interested in what the parties' thoughts were because -- and I need to say this preliminarily is that I had trial yesterday all day from 9:30 till after 5:00. And I also just received that motion and, you know, wasn't expecting to receive that motion and I reflected that in the order shortening time.

But I did not read the entire motion. I didn't read the motion at all. I read the application to shorten time and the order shortening time because that is all the time I had yesterday in the trial. And I saw that it was a motion for reconsideration, but it was based on what happened here on June 14th where I said they could ask for an extension of the

challenge period by requesting it by a letter on June 25th. And I assume -- since it referred to that specifically, I guess I assumed that that was somewhere in the papers that were being submitted, but I made a wrong assumption because it wasn't there. It was -- there was no request to extend the challenge period which, as I recall, was what the Ad Hoc Bond Holders Committee said was the only thing they were asking for in that order.

And that's why I did what I did because I think -- I looked at -- actually, I looked at the order that was presented and it said "vacate the DIP orders" and I said, wow, this is completely beyond what anyone was contemplating on June 14th. And not saying that parties, like you said, can't file motions that they believed were appropriate. I'm not saying that at all. It's just it caught me by -- it caught me by surprise. And I said, boy, you can't file that kind of motion on two days' notice and expect people to deal with it.

But then I got the reply from the lenders and the debtor and then I read the motion and I -- and I saw that it was actually to vacate the orders. The was the relief that was -- the DIP orders. That was a relief that was being sought. So I made a bit of a mistake on the order shortening time in the sense as developed by the facts because if the parties -- I thought it was too much to ask in that short of a time period and whatnot. Not at all what was contemplated to

happen in that short period and that was kind of my visceral reaction.

But now having read the papers and, more importantly, that, you know, you started it off that way and the lenders -- lender objected, Sixth Street objected immediately, the debtor filed something this morning, that's who I was concerned about, and the Creditors' Committee, of course, and the Creditors' Committee hasn't submitted anything. And if you guys are prepared to proceed on the shortened -- extremely shortened time period requested by the bond holders, then that's something we've got to think about and figure out how to deal with that. That's my initial -- that's my initial reaction.

I know that a lot of these things were done on the fly and -- not on the fly, but were done quickly. Correct myself. Were done very quickly and, you know, maybe like I didn't see any -- there was a -- I guess there was one certification that I saw, but I'm also very extremely concerned about the progress of the case and I don't want to hold things up, so I'm willing to do this really quickly, but I just need to know what the parties think about it, what record I need to do it on.

I will tell you what my initial thought was without even asking you. My initial thought was there's a lot of facts that I saw in here and I'm sure each party thinks they can back up those facts as best they can, but I'm willing to completely

adjust my schedule and get it done, have a hearing. The -- you know, the debtor's response had a lot of facts in it and you have a lot of experts and maybe one or two of those people can come up and say, this is why we did this, this is -- we couldn't have predicted this; we didn't know whatever was going on. And the bond holders can put their facts in and I'll get you a quick decision. I'll get you one before the end of this week. That's my goal and that way we can continue. That was what I thought.

Unless parties think that -- unless parties think it can be done or should be done more quickly, I don't know how much more quickly it can be done than that, to be honest, but if there's -- somebody has a better idea I'm willing to listen to it, but this is too important of an issue and too -- you can't have the kind of overhang that we're talking about for any extended period of time. So I want to get it done quickly. I want to decide quickly. Some people are going to think I'm right, some are going to think I'm wrong, but I want to get it done quickly.

MS. GEIER: Think you're right.

THE COURT: I guess Mr. Hillman was rising. I don't know who was rising first, Mr. Feinstein, Mister --

MR. KINOIAN: Well, Your Honor --

THE COURT: I don't really care.

MR. KINOIAN: It is our motion, so I was kind of

taken aback --

THE COURT: I'm sorry, I thought you were -- you're Mr. Kinoian.

MR. KINOIAN: Yes, Your Honor.

THE COURT: Yeah, yeah.

MR. KINOIAN: I was kind of taken aback just --

THE COURT: I had you mistaken for Mr. Hillman.

MR. KINOIAN: You know, started on our motion when it was our motion, so --

THE COURT: Yeah.

MR. KINOIAN: To specifically address these concerns that Your Honor has just raised -- and I hope you don't mind if I'm not going to ask counsel to cede the podium, I'll just state it from here -- is that our application for shortening time, which specifically did reference Your Honor's -- the June 14th hearing when Your Honor directed us to submit something requesting an extension of the challenge deadline, that was the purpose of that paragraph two in our -- the application for shortening time, docket 984.

THE COURT: But you didn't ask for it.

MR. KINOIAN: That's what it was intended for, Your Honor.

THE COURT: Yeah. I just don't -- I'm -- like I said, I don't hide stuff. That doesn't -- that was just really surprising to me. I was -- I didn't understand it. I just

didn't understand it, but --

MR. KINOIAN: So we accompany --

THE COURT: But here we are.

MR. KINOIAN: So, Your Honor, when they talk about prejudice with the overhang, it was certainly contemplated under the terms of the final cash collateral order -- I'm sorry, the final DIP financing order and, as discussed during the June 14th hearing, was that the challenge deadline could on an outside date get extended to July 4th.

So what we would contemplate, Your Honor, is that we could have a hearing on the motion to dismiss before the week is out. We could ask Your Honor's ruling before the week is out and --

THE COURT: There's a motion to dismiss also?

MR. KINOIAN: Excuse me?

THE COURT: There's a motion to dismiss also -- the motion for reconsideration, right? That's -- yeah.

MR. KINOIAN: Yeah. We -- we could have a preliminary hearing before the week is out. We would like to request discovery on these issues because they're -- you know, we -- not to get too caught up in the facts of the case, Your Honor, but the fact of the matter is the Ad Hoc Bond Holder Group had requested this information on day two and was not -- on day two of the case and was not provided the information. We solicited a request for a confidentiality agreement back

then, was not provided with that. It wasn't until I think it was, you know, May 26th that we finally entered into the non -- the confidentiality agreement that currently exists between the parties.

So it wasn't until the discovery that Your Honor essentially directed the parties to produce to us after the June 14th hearing that we then learned about the information that is now the basis of our motion for reconsideration.

So, Your Honor, you know, for them to say, well, they've known about this forever, you know, they've had an opportunity to be in the case, the fact of the matter is, Your Honor, we'll be -- we would be able to produce emails that show that we have been requesting information and had been ignored. Not only were we requesting information from the debtor, but we were requesting information from the Committee and we were not being provided that information. And we are a party in interest and then all of a sudden, you know, a day before the June 14th hearing these parties announce that there's this global settlement and it doesn't involve the largest unsecured creditor in the case. So -- creditor group, I should say, in the case and that's where we are.

So we should be entitled to discovery on this and if the parties feel that they're prejudiced by, you know, some overhang on this case, well, you know, that's just a matter of them not having been candid with the court back at the time of

the -- of the interim order being entered and not being candid with the parties at the time that they announced this settlement --

MS. GEIER: Your Honor --

MR. KINOIAN: -- that was brought to the --

THE COURT: Well --

MR. KINOIAN: -- Court's attention on June 14th.

THE COURT: Mr. Kinoian, that's the kind of thing that I was talking about is that, you know, if you think they were not being candid, you have -- you said that. You said it now, you said it in the papers, and, you know, that's one of the -- I'm not doing any preliminary hearings. I'm getting this done. I'm getting this done. There's no reason for any preliminary hearings. What does that mean?

MS. GEIER: Yeah --

MR. KINOIAN: Your Honor, we should be entitled -- we should be --

THE COURT: What does a preliminary hearing mean?

MR. KINOIAN: -- entitled to --

MS. GEIER: And, Your Honor, if --

MR. KINOIAN: They're disputing the facts. We should be entitled to discovery on these facts, Your Honor.

THE COURT: Okay.

MS. GEIER: We can very clearly share our emails, of course, that show the first reach-out weeks after the first day

hearing.

THE COURT: Okay.

MS. GEIER: We can share all of that.

THE COURT: Well, that's what I'm saying.

MS. GEIER: And that's fine. And there -- the indenture trustee is a member of the Committee, who agreed to this settlement and we all know those facts.

THE COURT: That's what I'm saying.

MS. GEIER: Those facts we -- we can happily address, but we all know, Your Honor, that if a debtor or any other party isn't being candid with an entity, they can, of course, always seek formal discovery. I disagree with the comments that were just made by counsel, but we know that there's another path, so just claim impossibility as to what the -- what the DIP need was as reflected in week two, I think we are just beyond the bounds of reasonable inquiry.

Your Honor, I think we're prepared to do what we need to put on the record that we can today to dispense with this hearing. We believe that it can actually be decided on legal argument, probably as a threshold matter. I believe -- I think that was reflected in the papers, including the DIP lender's papers that, you know, they were hoping to address these threshold issues first. But, Your Honor, we do have our chief restructuring officer in the room that can respond to the items that were in our filed papers. There's no need to extend this

longer than absolutely necessary.

THE COURT: Um-hum. Well --

MR. KINOIAN: Your Honor, may my co-counsel be heard?

MR. GLENN: Your Honor, Andrew Glenn for the record on behalf of the Bond Holders Committee.

Your Honor, we heard about the DIP budget the day before the interim DIP hearing. We heard about the wind-down budget that disclosed the results that formed the basis of the motion to vacate the day before the final DIP hearing.

Now we're being told Your Honor should decide our 60(b) motion on one day's notice when Your Honor hasn't even had a chance to review the papers.

THE COURT: No, I have.

MR. GLENN: Okay. Thank you.

THE COURT: I have. I said I didn't review them before the --

MR. GLENN: Okay. Fair enough.

THE COURT: I didn't review --

MS. GEIER: And --

THE COURT: -- the entire motion before I signed the order shortening time, but now I have reviewed all the papers.

MR. GLENN: Fair enough. Thank you.

And so our point is this. If we're going to do this, let's do it fairly and let's do it correctly. Let's have that evidentiary hearing. It's not appropriate to bring a witness

in court without giving us the opportunity to conduct discovery and that's all we're asking for here. We haven't even had the chance to have formal discovery.

My declaration that I submitted, thank you very much to the debtor, was they made Ms. Etlin, who I know, available for informal interviews. This wasn't a formal discovery process. This is the game-changing moment in this case, Judge. We don't think our recovery is going to be anything meaningful in this case because of what happened on the first day. I would love to be wrong. I would love to be wrong, but that's where we are today.

So I would like for one time in this Chapter 11 case to have actual due process, discovery and evidentiary hearing before the Court. If they're right and they prove it to me, you won't even see me, but I should have that right.

MS. GEIER: Your Honor, we would be happy to share within the provisions of the Rules that provide for how discovery is sought. In 2004 examinations, it's very clear. We've had them served on us in each case. There's no lack of due process. He's been at every hearing since the first day.

THE COURT: The due process is based on the circumstances and so I'll consider all the circumstances.

MS. GEIER: Fair.

MR. HILLMAN: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MR. HILLMAN: David Hillman for the record, Sixth Street Specialty Lending as prepetition agent and DIP agent.

We were as surprised as you were. We moved fast to get you papers. It is absolutely critical that we have a path forward expeditiously and I heard you loud and clear and I am very appreciative that you will address this with due speed.

I have a proposal that I think makes sense.

THE COURT: I'm willing to listen.

MR. HILLMAN: I believe that there are several threshold issues that don't require you to make findings of fact that could be determined as a matter of law as to whether or not this reconsideration motion could ever be approved. I do not believe that there are any facts that could be developed to support that motion, so I would like the opportunity. And I don't think that that will take every long to make the threshold argument. Some of them are in the text of Rule 60(b).

For instance, I'll just point one out. Rule 60(b) says that you can seek reconsideration of a final order, as you know. You may have seen paragraph 36 of the reconsideration motion where interestingly it deletes the word "final" and does an ellipses with the word "an order." The text of Congress's statute is clear of Rule 60(b). Only final order. So right there they ask you to vacate the interim order. The statute they cite doesn't give them a basis. Those are the types of

legal issues -- and there are several. We've outlined them in our letter.

You're dealing here with -- and I don't want to be overly dramatic, but this is systemic risk. Right. This is a cloud here to allow a party 63 days after the interim order was entered, after the DIP lenders have advanced 40 million of new funding, 54 million on the eve of bankruptcy, agreed to allow 36 million of cash to fund reserves to have the rug pulled out from under them.

I know you know this, but every hearing is the press is here. I mean, *The Wall Street Journal*, the reorg researches of the world, the bankruptcy blogs. The capital markets need to know that this can't happen. So this would wreck havoc on Dip lending.

So having it done swiftly today starting with threshold issues I think makes the most sense. And if we haven't convinced Your Honor, and I am confident that I will be able to live up to this burden, that you can't dismiss this just on legal issues. And the only one who has to make that decision is you and we pivot and we stay here until as long as it takes and I appreciate you say this week to get it done. They've asked for to get it done fast. I heard you say, Your Honor, that you were concerned we couldn't move fast enough. We are here to resolve this because of the extreme importance.

I'll note that there are implications in here. For

instance, we thought we were dealing with an extension of the challenge period and we have reserves that are supposed to be released on certain dates and there's no scenario where I will agree to any release of the reserves, which are funding WARN payments post -- wind-down payments, priority payments. That is an extreme prejudice. I can't let that happen today, so I want to address that issue which I think --

THE COURT: But Mr. HIllman, I'm sorry to interrupt you, but I'm just -- I didn't say the threshold issues. I was going to limit the factual presentation to the threshold issues because there are a lot of facts that are said in the papers that, you know, the bond holders take issue with, so -- but they already take issue with them.

So that's why I'm more feeling, again just putting it on the line, that we need to just address the threshold legal and some of which are factual or mixed -- legal and factual issues.

MR. HILLMAN: Okay.

THE COURT: To -- before getting into the complete underlying merits of what the basis for the reconsideration motion is and to do it very quickly because --

MR. HILLMAN: I'm ready to do it right now. Right now. The debtors, I assume, are prepared to address the legal issues, threshold issues right now. I assume Mr. Glenn, who wanted to have his motion heard, can at least articulate the

legal issues right now. We'll go through them one by one and if Your Honor thinks there's enough for further hearings, then we're going to stay here and get it done at your -- whatever Your Honor says is --

THE COURT: Yeah. Well, I mean, I think that -- I think that, again, in fairness it's 3:00 today and there was the -- in my mind, the initial confusion as to what exactly was going to happen today and I thought we would talk about -- for example, there's the motion to seal and there's -- as you said, there's a lot of people that are interested in this. And I don't understand how -- I'm not clear -- not that I don't understand. I'm not clear on how that's going to work in this context --

MR. HILLMAN: Yeah.

THE COURT: -- because, you know, there was -- there was inadvertent, I believe, you know, disclosure of what was supposed to have been confidential information, but I'm not sure how -- some of it I saw in the papers that were coming back at me, so I'm not sure how much of it really is confidential, but I think we just need to -- that was my thought. My thought was -- you fleshed it out. I didn't say enough. You -- I said -- I said I wanted to get going this week and even as soon as tomorrow, but that -- to address the threshold legal issues, which I believe, sir, are informed by facts that are disputed and I need to make the call --

MR. HILLMAN: Yeah.

THE COURT: -- on those. In order to make a complete call, I need to -- for -- you know, for example, whether it's newly discovered or they couldn't have -- they couldn't have discovered it, you know, I know what your argument are and that really what they say goes beyond that in the sense that it is what they're saying is that you knew about it and you didn't disclose it, you and the debtor, and all that. And you know, I want to hear about it.

And I think those issues are really out there. They're here now. They're front and center. I think -- I think, you know, people know what the issues are and they define them in briefs that -- not yours, but the others that extend, you know, 20 or so pages, so --

MR. HILLMAN: Right. But my -- I -- we'll defer to exactly how Your Honor suggests. The only thing I would say is, you know, regardless of the facts, for instance, 60(b) says what it says. You can rule right now that you can't use 60(b) to undo the interim order. You can rule right now that you can't use a reconsideration motion to eviscerate 364(e). You can't rewrite the Code.

THE COURT: They said you didn't do it in good faith, sir. They said -- they're saying you're not proceeding in good faith.

MR. HILLMAN: In --

THE COURT: That's what they're saying.

MR. KINOIAN: Your Honor, if I may --

THE COURT: Just let them have their little discussion and then --

MR. SUSSBERG: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MR. SUSSBERG: Joshua Sussberg, Kirkland & Ellis, on behalf of the debtors. I would like a full trial. We've been questioned by -- I don't even know who he is. He's calling us non-candid.

THE COURT: I mistook --

MR. SUSSBERG: Feinstein --

THE COURT: -- Creditors' Committee, sorry.

MR. SUSSBERG: questioning our good faith. We're going to put our witnesses on the stand. We're going to demonstrate our good faith and demonstrate our good name and have a full fair trial and actually get to where Mr. Glenn said he didn't want to be, but somewhere not here because there's no "there" there and we want to demonstrate that to Your Honor. We're happy to do it as soon as tomorrow.

THE COURT: Let's do it.

MR. SUSSBERG: Good.

MR. GLENN: I object to that. Your Honor, so what we have here is a letter without any affidavit support where they're going to tell the court what evidence they're going to

put on the stand. Okay. I've interviewed Ms. Etlin. Do I have one email from the debtors? Do I have one email from Sixth Street? We asked for them to produce documents. They said, we're not going to give you anything.

So tomorrow I'm going to put -- they're going to put a witness on the stand. I get to cross-examine that witness and I have no discovery, no evidence, no deposition, no documents? We're just compounding the due process issue.

I spoke to -- I want to be very clear with the Court. Okay. Kirkland was very gracious. They made Ms. Etlin available to me. Okay. I, Andrew Glenn, have not accused Kirkland or Ms. Etlin or even Sixth Street of any intentional misconduct. Okay. I want to make that very clear. Okay.

But what I did gather from those interviews was a fast-moving, fast-developing situation where they filed the case on Sunday night and the Court heard the DIP hearing on Tuesday and during that very compressed period things changed. Things changed. And those were not disclosed not because they were hiding the ball necessarily. I don't know. They haven't given me one email. How could I possibly tell the Court that they've done that? I don't know. But I am entitled to Rule 34 document production to understand that.

And you know what? Mr. Sussberg and I know each other. Okay. Maybe we go to a conference room at Kirkland and we have that conversation tomorrow. Maybe this is all

explained to me, but what I understand happened is that the company at least knew about the blow-out sales weekend right leading up to the filing and it changed things. Okay. And what wasn't disclosed on day one, not necessarily for nefarious purposes or whatever, was how much cash the company had. Okay. We were told that there was a 30 million-dollar hold. That creates the emergency where I think Your Honor would have the basis, as you did act, to approve the final DIP.

Now, I told them over the weekend what we're going to do after the series of interviews. I said, you know what, the Pachulski firm did their job. There's a couple issues with the make whole. We looked at the perfection documents. They're perfected. But what happened right before that hearing was the disclosure of the actual DIP budget that -- performance for the first time. And so I told them we're going to move to reconsider in advance. I told Kirkland we're going to do it. They sent me a letter, filed it under seal. I instructed Mr. Kinoian to file everything under seal so we wouldn't have this fight. Yes, that was a regrettable event.

But Mr. Hillman and I discussed he's going to Europe for a vacation. He said, "Let's not do this hearing until I get back." Fine. There wasn't an urgency over the weekend when he told me that. This is a liquidation. This is a liquidation. There's no overhang on this case. They're going to follow through with the liquidation if I win this case or if

I lose this case. Let's do this right. Let's have more informal discovery which Mr. Sussberg has offered.

Failing that, I want documents. I want the emails between them. I want their analysis of the cash going into this case and I want the opportunity to depose these witnesses before they take the stand before the Court as due process in the Federal Rules of Civil Procedure allow. Thank you.

THE COURT: Sir, I'm looking at the application to shorten time and it says, you want a hearing on the motion for reconsideration today actually at 10:00 a.m.

MR. SUSSBERG: Well, we were -- we're in a bizarre procedural conundrum, Your Honor, and that conundrum is, as you described. You were expecting a letter. I thought I might send you a letter. This is a different procedural construct than what we discussed. We were trying to fit within the deadlines. Okay. We're not here -- we were never here. I talked to Mr. Hillman about this. We didn't intend to have a hearing before the court today. We had it -- we intended to have a hearing on the motion to seal today.

THE COURT: Um-hum. So Mr. Sussberg, is it a problem to get him those emails and whatever documents you're going to present to your witnesses?

MR. SUSSBERG: Yes, we'll get them all the documents and we'll do it quickly. We do want this resolved as quickly as we can.

THE COURT: Okay.

MR. GLENN: So, Judge, why don't you allow us the opportunity to meet-and-confer over the next 24 hours to see if we can come up with a resolution that works for us and hopefully rather than arguing about this in front of you?

THE COURT: Okay.

MR. HILLMAN: Your Honor, David Hillman. Only because Mr. Glenn decided to bring me into this discussion, he did send an email to me asking for documents. I sent him an email back. I said, "What's the legal basis?" He never responded because he didn't have a legal basis. He never -- he never sought discovery. Could have. Never sought discovery, never filed an objection to the initial DIP motion, final DIP motion. We all know what -- how contested matter discovery works. You file a motion. You're entitled to 9014 discovery.

Never did that. Could have done that. Never filed the request for 2004 -- or, in fact, I think in this jurisdiction you may even have an ability to take 2000 -- never sought to do that.

THE COURT: No motion needed.

MR. HILLMAN: Okay. So it's not some surprise that we're here and the thought that we should now stop the process to have discovery is backwards. He asked for it. You -- I did say to him that I'm leaving the country on Saturday. Your Honor said you're available to have this resolved before

Friday.

I think if this cloud continues it will be a big mistake and I would urge the Court to please to stick with the schedule. Let's start today. Let's start tomorrow. This notion of some deprivation of due process, that's made out of whole cloth. Thank you, Your Honor.

THE COURT: Thank you. Well, I think it's -- like I said, I think it's fair to give him -- give Mr. Glenn, the bond holders, the information that's going to be relied on in -- not the affirmative case. And really, it's their case. The truth is, it's their motion and it's really their case, but in -- in this circumstance it's kind of somewhat flipped in a way. But, you know, it's their case. They can -- you know, and if they have something that they're going to rely on that's not in the possession or control of the debtors, then you should give it to them also and --

MR. FEINSTEIN: Your Honor, could I be heard briefly for the Committee, please?

THE COURT: I'm sorry?

MR. FEINSTEIN: It's Robert Feinstein, Your Honor. May I be heard briefly for the Committee?

THE COURT: Okay. I thought you were here. I'm sorry.

MR. FEINSTEIN: Yeah, I'm not sitting at counsel table. I'm on Zoom today. Thank you, Your Honor.

Your Honor, I just want to point out one of the predicates for the committee's settlement with the lenders and with the debtor was to avoid the friction costs of the heavily contested matter, discovery, trial proceedings in a case that's already desperately thin. So we're concerned about setting this on a path of open-ended discovery and a trial and so forth because it's just going to erode the estate in a significant way.

And I think there are threshold questions, Your Honor, at least from the Committee's perspective, that I think should be addressed before we embark on that expensive course. And specifically, from our perspective, Your Honor, the ad hoc noteholders were in the courtroom on the first day when the roll-up was approved and we've all agreed that was a controversial thing. It was tough on the unsecured creditors. I watched it from a distance because we had no client at the time.

But Mr. Glenn's partner was in the courtroom, knew that there was a roll-up, and knew from Mr. Hillman's speech that this was permanent, that this was not subject to being rolled back.

So to conclude the hearing by saying nothing on this issue is surprising to us. What they've said was, we reserve our rights. And then from that -- the date of that hearing through the end of May from the Committee's perspective, we

never heard from them, not an informal request, not a formal request and, as somebody just noted, we all know the Bankruptcy Rules. If there was an issue about the entry of the interim order, something that could be raised in the context of the final order, let's start discovery. The Bankruptcy Rules provide for it, there's ample time to do it and yet there was no discovery served.

And then you have the final hearing where, again, the ad hoc lender's counsel showed up and essentially consented to the entry of the final order so long as it contained the corridor for them to extend the challenge period. So, like everybody else, we were surprised when the challenge request didn't come but instead we got a reconsideration motion to vacate both orders.

Because no objection was filed, Your Honor, one of the threshold issues in our mind is, how can you move to reconsider an order that you didn't object to. That's both the interim order and the final order and, again, the counsel for the group was in the courtroom on both occasions.

So if the consequences of that can be determined on a threshold basis, I don't think you ever get into who's and what's to whom about the budget because there was more than adequate due process. In fact, the ad hoc noteholders had a better chance than the Committee to avoid the roll-up because they were in the courtroom on the first day, but they didn't

say anything.

So I -- to me, these are gating issues, Your Honor, that if they're disqualifying to a reconsideration motion, like lack of standing if you didn't file an objection now you move to reconsider, we might save ourselves a lot of time and money. The Committee's goal here was to save expense and try to maximize value through a settlement that we still support because it was the right thing based on the facts that -- on the ground on the first day of the case when things were uncertain. So it'd be -- you know, have it second-guessed by 2020 hindsight by somebody who didn't object and had all this opportunity to take discovery really is unfortunate, Your Honor. That's all I'll say. Thank you.

THE COURT: Okay. All right. It's telling me to join audio. I'm not sure why.

Yeah. I think there has been a lot of opportunity for discovery in this case and whatever -- for whatever reason it didn't happen. And I am concerned about the costs, but I'm also concerned about having a hearing at -- that is on a full record, so I'm -- that's what I'm going to do. You can confer between today and tomorrow at 10:00 when we will gather here again and I'm not -- it's not going to be a long, drawn out, you know, days-on-end hearing. It's going to be hopefully concluded within the day or if it has to spill over to Thursday, then it spills over to Thursday a little bit. But,

you know, keep your witnesses short and sweet and we'll get it done.

MR. HILLMAN: Your Honor, I rise. I appreciate the speed. There's two points. One, I'm going to call housekeeping, one is substantive housekeeping. I want to make sure that the reserve release date, as defined at paragraph 10, does not happen until at least we continue for the hearings, hopefully that get resolved. So I would ask with the debtor's permission that we all agree on the record that the reserve release date is extended for at least one more day and then we can determine what happens at the end of the day.

MS. GEIER: Your Honor, Emily Geier for Kirkland on behalf of the debtors. The debtors can agree to the extension of the release date. We don't want to, you know, hold that and over the heads of anyone. It's not an uncapped extension, just to be clear, Your Honor. It will just continue until this hearing has concluded. If we need to discuss it further after that, we can gauge further.

THE COURT: Okay.

MR. HILLMAN: Thank you.

THE COURT: I appreciate that.

MR. HILLMAN: And now in the substantive point, I'd like to make an oral motion. I recognize there's going to be a hearing tomorrow. Rule 60(b), what they moved under only allows for reconsideration of final orders. That's in the

text. They have sought to reconsider using Rule 60(b), both the interim order and the final order. Based on the Rule -- the text of the plain language I would ask that the motion be dismissed as it relates to the interim order and we can come tomorrow at 10:00 to deal with reconsideration of the final order. That's my narrow oral motion for the Court's consideration.

THE COURT: I think -- didn't they cite a case or two that says that you can reconsider the orders on -- even interim orders on -- or non-final orders under 60(b)? And I just haven't had a chance to review it. I know it says that --

MR. HILLMAN: Well --

THE COURT: I know that it says that.

MR. HILLMAN: Oh, I'm not -- I don't believe that the Ad Hoc Group has suggested that Rule 60(b) applies to interim orders.

MR. KINOIAN: Your Honor, if I may. Again, Gregory Kinoian for the Ad Hoc Bond Holder Group.

Your Honor, paragraph 4 of the final order is very clear that upon approval of the final order it also reapproves the interim order. So essentially the interim order gets rolled up into the final order.

So basically what counsel is saying is that if we had tried to file a 60(b) motion on day two, they would have argued that it's not a final order and that we would never have been

able to bring this information to Your Honor's attention.

THE COURT: Okay. All right.

MR. HILLMAN: I didn't hear him say that you could use 60(b) to reconsider an interim order, so I stand on the motion and I didn't hear any explanation of why the words of the statute don't say what they mean or any authority in any case to stand for that proposition that the word "final" should be restruck -- excuse me, struck from Rule 60(b), the statute they rely upon.

THE COURT: Yeah. I just -- like I said, I want to just -- I want to do this on the full record.

MR. HILLMAN: Thank you, Your Honor.

THE COURT: I appreciate your motion and oral motion, but I just want to -- like I said, I had trial yesterday. I had motions this morning and I was trying to read these papers and I just want to have an opportunity myself to satisfy myself that this is being done correctly.

MR. HILLMAN: Thank you.

MR. GLENN: Your Honor, I just want to understand your ruling. So we're going to meet and confer. What is your expectation in terms of the timing of discovery and the presentation of witnesses to Your Honor?

THE COURT: My expectation is that you will talk to Mr. Sussberg or whomever, Ms. Geier, whoever it is that you need to talk to and exchange the documents that you're looking

to -- that you're looking to rely on tomorrow and then you can put on your case and they can put on their case and that's where it will go.

MR. GLENN: Okay. I'm just going to note for the record my objection to that. I would like to get all the communications underlying what they're going to present. Otherwise, I'm stuck cross-examining them on what they want to present, which is not fair to me.

THE COURT: I think there's an argument, sir, that I'm giving you more than you're entitled to because you could have asked for this 60 days ago.

MR. GLENN: I --

THE COURT: Okay.

MR. GLENN: -- respectfully disagree, Judge. This information came out on the eve of the last hearing and --

THE COURT: The result of all -- of the debtor's results came out on the eve of the last hearing?

MR. GLENN: Eve of the last hearing.

THE COURT: Okay.

MR. SUSSBERG: Judge, we're absolutely going to confer with Mr. Glenn. We'll get him the documents and we'll be ready to go tomorrow. Thank you, Judge.

THE COURT: Does 10:00 work for everyone?

MR. HILLMAN: Anything that works for Your Honor works for us, Your Honor.

MR. GLENN: We'll make it work. Thank you.

THE COURT: Okay. Thank you. All right.

So I don't -- Mr. Hillman raised a substantive issue that I have -- I think is a substantive issue is what happens with the seal.

MR. GLENN: I believe that issue is now largely moot because we've agreed on the redaction of certain items. I think by tomorrow one of those issues is the ultimate disposition of the leases. I don't -- I couldn't speak as to whether that now can be disclosed, but I think that was of the -- you know, the value of the lease designations is one of the key items that was --

THE COURT: Because in addition to being a legal substantive issue, it's a practical issue because there's a lot of people listening in on Zoom and participating via Zoom and there's a lot of people here and what would we do. Would we empty out the courtroom and close out the Zoom or what would we do?

MS. GEIER: Yes, Your Honor. We will meet and confer and how to protect the confidential information that we don't want out there. It really goes to misapprehensions about projected recoveries and we need to make sure that -- we'll make sure that he has all the information necessary and we'll propose something to Your Honor that --

THE COURT: That would mean --

MS. GEIER: -- makes sense.

THE COURT: -- meet and confer.

MS. GEIER: Yes.

THE COURT: That's a good idea. Okay.

And then -- and I'm not trying to open a Pandora's box in any way. I believe that at least from our point of view we sealed the document as soon as we got notice that it was not sealed. And I'm not sure whether it was widely disseminated or not widely disseminated or what.

MS. GEIER: Your Honor, it was posted to public dockets or -- you know, the various --

THE COURT: Well, I know --

MS. GEIER: -- subscriber --

THE COURT: -- it was posted on our docket.

MS. GEIER: -- subscriber sites that we all -- we all know and love. Those were posted instantly. We spent a good deal of the day getting them removed and trying to do damage control. You know, to counsel's credit, they joined us in that effort, so it was not -- we can't say right now what the discernable damage is, but there is certainly an unanswered question there.

THE COURT: Okay. I was just hopeful because I see from the docket markings that looks like it was filed around 1:00 a.m. on the 20 -- on the morning of the 25th. So I was thinking maybe it wasn't that widely disseminated, but --

MS. GEIER: That's correct, Your Honor. I think it was -- it was up for -- from many, many hours --

THE COURT: Yeah.

MS. GEIER: -- into -- through the morning before it was taken --

THE COURT: Okay.

MS. GEIER: Okay.

THE COURT: That's it. Thank you.

MR. KINOIAN: Your Honor, Greg Kinoian again. I'm the one who inadvertently uploaded the declaration, which was supposed to be filed under seal, which as mentioned, was filed under seal. And I realized that mistake. Like the filing was at 1:00 a.m. I realized the mistake by 1:30 in the morning and alerted my co-counsel about that. And I had called chambers, left messages for Ms. Hall, your senior law clerk, and also for Mr. Phil Garris, your courtroom deputy, at 6:30 in the morning. Ms. Hall called me at 8:15, 8:20 in the morning. By 9:00 a.m., the entire docket of 982 was blocked from public view and I had asked the assistant deputy in charge in the clerk's office, Ms. Veloz Jimenez, whether or not the IT department would be able to tell us who or how many people may have downloaded the document in the interim and I did not get a response back on that.

MR. SUSSBERG: Judge, we're totally fine with this. This happens. There's a reason have pencils have erasers on

the end and we talk all the time with our folks about mistakes and you've got to be able to fix them and identify them, so it's fine. We're moving forward. Looking forward to having our day in court.

THE COURT: Okay.

MR. SUSSBERG: Thank you.

MR. HILLMAN: Your Honor, David Hillman for the record. Appreciate Mr. Sussberg.

I just wanted to reserve our rights on those issues because if they're -- the information that flowed if it hits -- if it hurts anybody, it hurts our client's recovery first, so our rights are fully reserved. And part of the challenge is when I stood before you and read into the record the settlement that I reached with Mr. Glenn, at your suggestion we adopted your proposal. The very first thing was that Mr. Glenn's clients would sign a non-disclosure agreement. That never happened. Only Mr. Glenn signed the NDA. I just found out about this, this morning, another surprising fact.

So when we think about the consequences that flow from what is effective a breach of a non-disclosure agreement, it was a breach of an expectation that was read into the record that this wasn't going to be just a frolicking detour of a lawyer who submits an affidavit, but clients.

That hasn't happened here. They didn't sign the NDA and if I'm wrong Mr. Glenn will correct me.

MR. GLENN: We have a client rep that has signed an NDA. None of the other clients saw any confidential information.

THE COURT: Were you going to give that to Mr. Hillman so that --

MR. GLENN: Sure.

THE COURT: Yeah. All right. And I mean, I'm -- you know, I guess the main parties at interest here are, of course, the debtor, of course, the bond holders. But the -- also the Creditors' Committee and Mr. Hillman's client, so we're fine.

So whoever has witnesses, you should -- you know, you should tell each other -- whoever the witness today, tell each other who the witnesses are and so that they know. Okay?

MR. SUSSBERG: Yes, sir.

MR. FIEDLER: Good afternoon, Your Honor. Ross Fiedler of Kirkland & Ellis on behalf of the debtors. We can now with Your Honor's permission turn to the agenda, hopefully more exciting news.

THE COURT: Sort of anti-climatic, but --

MR. FIEDLER: Yeah. As Ms. Geier --

THE COURT: We needed to get there. I thought that's where we were going to start, but didn't quite work out that way, but -- so I have to reorganize my stuff for a moment also.

MR. FIEDLER: Yes, of course.

THE COURT: Because I know -- see, I changed the pile

of my papers and there was a -- there was -- as I said at the beginning, there was an amended agenda filing.

MR. FIEDLER: I'm sorry, Your Honor. None of the matter -- the agenda items actually moved. It just reflected additional filing --

THE COURT: Okay.

MR. FIEDLER: -- since the prior Chapter --

THE COURT: So why don't we go through it? I have them both now.

MR. FIEDLER: Okay. Great. Well, Ms. Geier definitely didn't bury the lead.

The next item on the agenda is the sale motion to Overstock.com. As Your Honor is aware, at the first day hearing we discussed one of the key elements of the case, which was a potential sale of all or a portion of the debtor's assets. We filed the bidding procedures motion, which Your Honor approved at docket number 92. We further amended that order just to extend certain dates and deadlines throughout the case, which proved very helpful as we ultimately reached a stalking horse purchase agreement with Overstock.com.

That agreement contemplates a sale of certain intellectual property and e-commerce assets of the Bed Bath & Beyond.com banner for 21.5 million dollars in cash, such to certain conditions.

We did file a selection of the stalking horse bidder

notice at docket 708, which Your Honor subsequently entered an order approving the stalking horse bidder and the APA memorializing that transaction at docket number 791.

Shortly thereafter, we held an auction with respect to certain assets that were subject to the Overstock bid. Unfortunately, that auction did not result in a qualified bid for those assets that exceeded the value provided by the Overstock bid. And so we filed a notice of successful bidder. That was at docket number 877 identifying Overstock as the successful bidder and certain backup bidders.

So now we're here seeking approval of that transaction on a final basis. I'll just -- before I get into anything else, Your Honor, I'd like to move the declaration of Christian Tempke of Lazard into evidence in support of the sale. That was filed at docket number 1088.

THE COURT: Right. Any objections? Having heard no objections, I'll admit that into evidence.

(Declaration of Christian Tempke admitted into evidence.)

MR. FIEDLER: Thank you, Your Honor.

So just real quick before I get to a conclusion here, I wanted to highlight one issue related to certain objections that were filed related to a separation notice, not applicable to the relief requested today.

In accordance with the bidding procedures, we did

file a notice of potentially assumed executory contracts and leases to inform parties that we would potentially be seeking to assign those leases or contracts through a sale.

That's not the case here. We have an Overstock sale that deals with IP assets. No leases are being assigned. There's only five IP contracts that are actually being assigned. So all of the objections and the notices and the reservation of rights that have been filed, they don't relate to this sale. We've, you know, made a lot of progress in letting folks know and trying to clear up that confusion, but I don't think any of those objections need to be addressed today.

THE COURT: Yeah, I think that, you know, it was helpful that additional notice that was filed, you know, clearing that up. I think there was a lot of confusion and --

MR. FIEDLER: Yeah, certainly.

THE COURT: -- got that cleared up.

MR. FIEDLER: And we did -- we filed the reply also just to identify the contracts that were actually being assigned.

THE COURT: Um-hum. And there's no objection as to those.

MR. FIEDLER: Correct, correct, Your Honor.

So with that, Your Honor, I'll submit that the debtors believe that approval of the sale is an appropriate exercise of the debtor's business judgment. It maximizes value

of the debtor's estate and it -- it is supported by the DIP lenders and the UCC. So unless Your Honor or anyone else has any questions or would like to be heard, we'd respectfully request entry of the order.

I will note we -- I don't know if we've done it yet. Have we filed a revised order? If we haven't, we'll file it and submit it to chambers shortly after the hearing.

THE COURT: Okay. And so -- yeah --

MR. DOSHI: At an appropriate time, Your Honor, if I may be heard.

THE COURT: Yes, please. Who is -- who is that, please?

MR. DOSHI: Sure.

THE COURT: Doshi?

MR. DOSHI: Yes. Amish Doshi on behalf of Doshi Legal Group on behalf of Oracle America, Inc.

THE COURT: Okay. Go ahead, sir.

MR. DOSHI: It was my understanding there was going to be a representation. Perhaps counsel forgot in all the hour-long prior discussion, but Oracle America, Inc. and the debtors are parties to numerous, numerous contracts. And I understand that that portion of it relates to the sale that's going to be going forward.

There is one aspect of our objection that we filed. We were objecting to any transition services agreement to be

entered into between this buyer and the debtor. And my understanding is there is not going to be a TSA. And if I can have confirmation of that from the debtor's counsel as well as purchaser, that issue would be resolved or at least for the next sale.

MR. FIEDLER: Confirmed, Your Honor.

THE COURT: Did you hear that, sir? It was --

MR. DOSHI: Oh -- oh --

THE COURT: It was confirmed by the debtor's counsel, but I guess --

MR. DOSHI: Great. Thank you very much.

THE COURT: Thank you.

Okay. So I have reviewed this application and motion and it really easily satisfies the tests that are set forth in this circuit in adversaries. It's a proper exercise of the debtor's business judgment. It was adequately -- more than adequately noticed. There was an auction sale, competitive -- well, it was in some sense a competitive bidding, but certainly there was -- because there's two backup bidders for partial assets, right?

MR. FIEDLER: Correct, Your Honor.

THE COURT: Yeah. So there was interest and there was bidding, but it didn't result in a higher bid, but sometimes that happens and there's -- the price was negotiated between very sophisticated parties, no indications of any

interest. So I will approve that, conclude the sale.

MR. FIEDLER: Thank you, Your Honor.

THE COURT: Grant the motion.

MR. FIEDLER: So next on the agenda is a motion to approve the lease termination agreement with CP Venture Five. This was filed at docket number 773. An order shortening time was entered shortly thereafter at docket number 783.

The objection deadline for this motion was yesterday at noon, Your Honor. No objections were received. The deal here is pretty simple, $260,000 paid to the debtors, plus a waiver of all claims. The debtors and their real estate consultant believe the offer is above value and agreed to this termination on that basis. So absent any questions from Your Honor, we'd respectfully request entry of the order.

THE COURT: I had 265. Is that -- 265 for that?

MR. FIEDLER: Yes, 265.

THE COURT: Right. Okay. All right. Again, this is even, you know, I guess in some sense easier because it's an agreement between the parties and there's a significant consideration being paid and it's also a lot of pre -- the agreement marketing and efforts and deal the debtor came up with in proper exercise of business judgment and really, I don't even have to get in all those sort of issues. Okay.

MR. FIEDLER: Great. Thank you, Your Honor.

So next on the agenda is another lease termination

motion with Agua Mansa. This was filed at docket number 724 with an order shortening time entered by Your Honor at 732. The objection deadline was also yesterday at noon. No objections were received.

The deal here relates to a warehouse in California. The purchase price and termination fee is five million dollars. Also, a nine million-dollar LC will be cancelled upon entry of the order. There'll be mutual releases for both parties. This is a location that the debtors have been marketing for quite some time and no actionable offers were received for the location outside of this lease termination agreement we have today.

So unless Your Honor has any questions or any other parties wish to be heard.

THE COURT: Oh, somebody wishes to be heard --

MR. GOLD: Yes, thank you.

THE COURT: -- yeah.

MR. FIEDLER: Mr. Gold, unsurprisingly.

MR. GOLD: Good to see you live, Your Honor. Ivan Gold of Allen Matkins for the landlord, Agua Mansa --

THE COURT: Good afternoon.

MR. GOLD: -- Commerce, Phase 1, LLC.

We filed -- part of our deal, Your Honor, was a good faith finding under 363(m) and we filed at docket 967 -- excuse me, 997, the declaration of Douglas Roberts illustrating the

arm's length nature of the transaction and the lack of the relationship between this landlord and the debtor. Other than the landlord/tenant relationship, the common management of the -- the property manager of the landlord is also manager of other Bed Bath & Beyond retail locations, but truly an arm's length relationship with the requisite stuff.

I would move 997 and the proposed order uploaded by the debtors. I believe it's at 9 -- it's a revised form of order. It was uploaded previously, that we would ask entry consistent with that order, Your Honor.

THE COURT: So do I have the revised form of order?

MR. GOLD: Yes. I believe it's at 967.

THE COURT: And I --

MR. GOLD: That's reflected on the agenda.

THE COURT: Do I have the revised -- do I need revised orders on any of the prior ones? Not you, Mr. Gold.

MR. FIEDLER: Only on the sale order, Your Honor.

THE COURT: On the sale order. Okay. We'll wait for that one.

MR. FIEDLER: Yeah.

THE COURT: Okay. Yeah. Any objections to the declaration being moved into evidence?

Having heard none, it will be admitted into evidence and get those findings as well, sir.

(Declaration of Douglas Roberts admitted into

evidence.)

MR. GOLD: Okay. Thank you, Your Honor. Have a good afternoon.

THE COURT: Thank you. Thank you. You, too.

So that is also approved and we have that revised order.

MR. FIEDLER: Great. Turning, Your Honor, to the last motion on my plate before I turn the podium over to my colleague, Mr. Sloman, is the final cash management order. We've adjourned this motion a few times to reach an agreement with the United States Trustee on the terms of the final order, specifically the 345(b) waiver. We are very pleased to report we have reached an agreement on that issue, which is reflected in the revised proposed order that I believe was filed at docket number 1075.

So unless Your Honor has any questions or the United States Trustee would like to be heard, we'd respectfully request entry of the order.

THE COURT: Ms. Steele.

MS. STEELE: Your Honor, just that I agree with Mr. Fiedler's comments and the order does reflect a limited waiver based on three specific accounts, which it actually reflects what's happening with those accounts and with the additional language in paragraph 5. The U.S. Trustee has no objection to the order being entered.

THE COURT: And that's the one that was filed yesterday as a final order at docket 1075.

MS. STEELE: Yes, Your Honor.

MR. FIEDLER: That's right, Your Honor.

THE COURT: All right. Well, I know just by the adjournments and the language changes that this was also vetted with the Trustee's Office and whomever else wanted to look at it and this is the final product. Is that -- I'm not going to disturb it and I'll enter that order.

MS. STEELE: Thank you, Your Honor.

MR. FIEDLER: Great. Thank you, Your Honor.

We just have one agenda item left. I'll cede the podium to my colleague, Mr. Sloman.

THE COURT: Okay.

MR. SLOMAN: Good afternoon. Michael Sloman with Kirkland & Ellis on behalf of the debtors for the record.

The last item on our agenda is the debtor's motion to assume and assign certain leases to Burlington, which was filed at docket number 644. The motion seeks to sell six leases to Burlington for the price of about 1.53 million dollars. We've negotiated with them and the other parties and we have filed a revised order on the docket at docket 1090. That reflects the comments from the landlords and other parties in interest and --

THE COURT: And the -- I guess I know about -- I know

about two objections being resolved. There was one other objection as to the Texas lease.

MR. SLOMAN: Yes, so there were three objections filed on the docket. Two were withdrawn this morning. The third with respect to source 788 with the Sherman lease, we are adjourning that lease to the July omnibus hearing and will be heard at a different date. Their counsel is aware and agreed to this.

THE COURT: Okay. I guess I didn't catch up with that part of it yet. I wasn't aware that --

MR. SLOMAN: I believe it's on the amended agenda, but --

THE COURT: Were you aware of that, that this motion is adjourned as to -- no. So maybe you can just send a confirming note to -- well, we have the revised order again, you're saying?

MR. SLOMAN: Yeah, and the revised order does not include that store.

THE COURT: Okay. All right. Yeah, and so I've reviews this motion as well and so there was the assumption and assignment to this particular leases to Burlington and there were some objections that were filed, two of which were withdrawn; one of which remains and adjourned to July 8th, you said? Yeah. And that was the JMCR Sherman at 450 Travis Street, Suite 250 in Dallas, Texas.

MR. SLOMAN: Yes, that's correct.

THE COURT: Okay. Well, it's number 7 -- store number 778.

MR. SLOMAN: And they revised it. It reflects that, so that's been removed, so --

THE COURT: I'm sorry?

MR. SLOMAN: And the revised order reflects that's been removed from this current package.

THE COURT: Okay. And does the revised order say the motion is adjourned as to that one or --

MR. SLOMAN: I don't believe so. I think we noted on end of it, but we can put something on the docket if that's helpful.

THE COURT: Okay. All right. And so the objections to these -- to this motion were resolved or adjourned as to that one lease and again bringing some benefit to the estate. I know that they were extensively marketed and this is the result that that was obtained after serious significant professional efforts to market the leases and certainly makes sense and will be approved as well.

MR. SLOMAN: Thank you, Your Honor.

THE COURT: Thank you.

MR. SLOMAN: I think that's it for today unless you have anything further.

THE COURT: I don't have anything further. I guess

we'll see everyone tomorrow morning at 10:00 a.m.

MR. SLOMAN: We'll see tomorrow morning. Thank you.

THE COURT: Thank you. And I -- you know what I do? Before we go, I do want to say, you know, I want to keep it tight and, you know, deal with the threshold issues that are affected by the facts and, you know, not -- we don't need to go far, far astray. We just need -- there's a number of factual statements that were made by both sides and that's what I want to focus on as to why this is an appropriate 60(b) motion and that's what I want to focus and limit the hearing to, okay?

MR. SLOMAN: Yes.

ATTORNEYS: Thank you, Your Honor.

THE COURT: Thank you. Have a good afternoon. See you tomorrow.

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C E R T I F I C A T I O N

I, RUTH ANN HAGER, court-approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, and to the best of my ability.

/s/ Ruth Ann Hager

RUTH ANN HAGER

J&J COURT TRANSCRIBERS, INC. DATE: July 4, 2023